

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)	
)	
Plaintiff,)	DEFENDANT MICHAEL ANDREW
)	SCHLEGEL'S MOTION FOR A MISTRIAL
vs.)	
)	
Michael Andrew Schlegel,)	Crim. 13-74 (PJS/FLN)
)	
Defendant.)	

Defendant Michael Andrew Schlegel, through his counsel, Daniel L. Gerdts, Esq., and Daniel P. Brees, Esq., respectfully requests the Court for an Order declaring mistrial for violation of Defendant's right to a meaningful opportunity to present a complete defense in violation of his Due Process rights guaranteed under the Fifth Amendment.

FACTS

Mr. Schlegel's attorney, Mr. Gerdts, approached one of the prosecution's witnesses, IRS Agent Anna Johnson. The prosecution immediately and without justification told the witness not to talk to Mr. Gerdts. During the witness's cross-examination, the IRS Agent testified under oath that she was told not to speak to Mr. Gerdts. This motion followed.

ARGUMENT

I. THE COURT MUST DECLARE A MISTRIAL BECAUSE MR. SCHLEGEL'S RIGHT TO A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE HAS BEEN VIOLATED.

Mr. Schlegel's right to Due Process as guaranteed by the Fifth Amendment has been violated because his right to present a complete defense has been infringed. The court must declare a mistrial as a result of the violation of Mr. Schlegel's Due Process rights.

“Just as substantial interference with a witness's decision to testify constitutes a violation of a defendant's constitutional rights, such interference with a witness's decision to grant or deny an interview to the defense also deprives a defendant of his right to present a complete defense.” *State v. Blazas*, 432 N.J. Super. 326, 343 (App. Div. 2013). There is no violation when the witness freely chooses not to be interviewed. *Id.* “However, when the free choice of a potential witness to talk to defense counsel is constrained by the prosecution without justification, this constitutes improper interference with a defendant's right of access to the witness. Justification on the part of the prosecution to interfere with that right can be shown only by the clearest and most compelling considerations.” *Kines v. Butterworth*, 669 F.2d 6, 9 (1st Cir. 1981) (collecting cases); *see also*, *Blazas*, 432 N.J. Super. at 343 (stating that the violation occurs when the prosecution impermissibly interferes with the witness's voluntary decision).

“If the prosecution impermissibly interferes with the defense's access to a witness during a criminal trial, that conduct violates due process insofar as it undermines the fundamental fairness of the proceeding.” *United States v. Bryant*, 655 F.3d 232, 238 (3d Cir. 2011). “A prosecutor should not discourage or obstruct communication between prospective witnesses and defense counsel. A prosecutor should not advise any person or cause any person to be advised to decline to give the defense information which such person has the right to give.” ABA Standards for Criminal Justice, Prosecution Function, 3–3.1(d) (3d ed. 1993); *Blazas*, 432 at 343.

Not only is this an ethical violation and a violation of an ABA Standard for Criminal Justice, it also undermines Mr. Schlegel’s right to a fair trial and interferes with his Due Process rights. The prosecution impermissibly interfered with Defendant’s access to interview IRS Agent Johnson during the trial. The prosecution offered no justification for its conduct but flat out told the witness not to speak to Mr. Schlegel’s attorney.

CONCLUSION

For the foregoing reasons, Defendant Michael Andrew Schlegel respectfully requests that the Court declare a mistrial.

Dated: 7 March 2014

Respectfully submitted,

DANIEL L. GERDTS, LAWYER

s/ *Daniel L. Gerdtz*

Daniel L. Gerdtz (#207329)
247 Third Avenue South
Minneapolis, Minnesota 55415
(763) 432-5855

DANIEL P. BREES, LAWYER

s/ *Daniel P. Brees*

Daniel P. Brees (#395284)
247 Third Avenue South
Minneapolis, Minnesota 55415
(612) 547-9153

ATTORNEYS FOR DEFENDANT